Arbitration CAS 2014/A/3707 Emirates Football Club Company v. Hassan Tir, Raja Club and Fédération Internationale de Football Association (FIFA), award of 19 June 2015

Panel: Prof. Martin Schimke (Germany), President; Mr José Juan Pintó (Spain); Prof. Petros Mavroidis (Greece)

Football
Termination of the employment contract by the player without just cause
Unjustified non-appearance at or leaving of the working place
Admissibility of liquidated damages provisions
Validity of a unilateral option clause
Admissibility of a counterclaim
Admissibility of a request for disciplinary sanctions to be imposed

1. **There is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause. Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith – assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned.**

2. **In accordance with Article 17 para. 1 of the RSTP, the parties to an employment contract may stipulate in the contract the amount of compensation for breach of contract. Where such a clause exists, its wording should leave no room for interpretation and must clearly reflect the true intention of the parties. Whether such clauses are called "buy out-clauses", "indemnity" or "penalty clauses" or otherwise, is irrelevant. Legally, they correspond therefore to liquidated damages provisions.**

3. **The regime which provides that if the club decides to terminate the employment contract, it shall pay the remaining contract value for the season of termination while if the player decides to terminate such contract, it shall pay the remaining contract value in full leads to a system which disproportionately favours the club, which, in practice, can establish a long-term employment relationship with a player and rescind it after one year only. With this method, the club can therefore refuse to keep the player if the latter does not progress as expected but may retain him, should he confirm his sporting qualities and value. Such a system is clearly contrary to the general principles of contractual stability as well as of labour law as it gives the club undue control over the player, without rewarding him in exchange. Moreover, the validity of the unilateral option allowing a party to terminate the employment contract after one year, while the**

other party is bound for the full contract term, is contrary to Article 335a CO which is mandatory and according to which notice periods must be the same for both parties.

4. **Irrespective of the *de novo* principle set out in Article R57 of the Code, a CAS panel cannot decide on claims that were not asserted in a procedurally admissible way at the CAS level. Therefore, a respondent may not request by way of its answer a ruling that it does owe the appellant an amount of damages less than that awarded by the first instance body, as it would be tantamount to granting the respondent what is in fact an inadmissible counterclaim. And to some extent it would also be contrary to the principle of *ne ultra petita*.**

5. **No rule of law, either in the FIFA Regulations or elsewhere, is allowing the club victim of the breach of contract to request that a sanction be pronounced. Indeed, the system of sanctions lays down rules that apply to the FIFA, on the one side, and to the player or to the club that hired the player, on the other side. A third party like the club victim of the breach of contract has no legally protected interest in this matter and has therefore no standing to require that a sanction be imposed upon the player and/or the club that hired the player.**

I. PARTIES

1. Emirates Football Club Company (hereinafter the "Appellant") is a football club with its registered office in Ras al-Khaimah, United Arab Emirates. It is a member of the United Arab Emirates Football Association (hereinafter "UAEFA"), itself affiliated to the Fédération Internationale de Football Association since 1974.

2. Mr Hassan Tir (hereinafter "the Player" or, together with Raja Athletic Club and the Fédération Internationale de Football Association, the "Respondents") is a professional player of Moroccan nationality, born on 12 December 1982.

3. Raja Club Athletic (hereinafter "Raja Club" or together with the Player and the Fédération Internationale de Football Association, the "Respondents") is a football club with its registered office in Casablanca, Morocco. It is a member of the Royal Moroccan Football Federation (hereinafter "FRMF"), itself affiliated to the Fédération Internationale de Football Association since 1960.

4. The Fédération Internationale de Football Association (hereinafter "FIFA" or, together with the Player and Raja Club, the "Respondents") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

A. Background facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

B. The agreements signed between the Parties

6. In May 2009, Raja Club contractually accepted to transfer the Player to the Appellant for the sum of USD 500,000 (hereinafter the "Transfer Agreement").

7. It is undisputed that the Transfer Agreement entered into force and that the transfer fee was paid.

8. On 14 May 2009, the Appellant and the Player signed an employment agreement (hereinafter the "Employment Agreement"), which contains the description of each party's respective obligations. The main characteristics of this contract can be summarised as follows:

- It is a fix-term agreement for three seasons (2009/2010 to 2011/2012), effective from 1 July 2009 to 30 June 2012.

- For the first season, the Appellant agreed to pay to the Player *"US$ 500,000 (…) of which US$ 200,000 is paid as a contract advance (…). The balance of US$ 300,000 (…) shall be settled as monthly salaries on ten payments, i.e. US$ 30,000 (…) per month"*. For the second and third seasons, the Player's yearly remuneration was increased to USD 700,000, respectively USD 900,000.

- The Player was also entitled to a car, an apartment in Ras Al-Khaimah, round trip tickets Morocco – Dubai – Morocco per season and bonuses in accordance with the Appellant's incentive-scheme.

- The Player contractually obliged himself, among other things, to *"comply with living and residing in Ras Al Khaimah"*, *"To participate in all matches, training sessions and all activities related thereto"* unless otherwise required by the Appellant, *"Not to enter in any negotiations with any other club throughout the term hereof, except through his current club with permission in writing"*, *"Not to leave the U.A.E without a written permission from the Club President, Secretary General or their deputy"*.

- Disciplinary sanctions are provided for, should the Player fail to attend training sessions (in which case it triggers a fine of USD 5,000 *"for each day of absence"*) or to attend any official match *"without acceptable apology"* (in which case *"two-month salary shall be deducted in addition to other punitive measures"*.).

- Pursuant to Article 13.3 of the Employment Agreement, *"[i]n case of the first team drops to the first class during the first season hereof, the contract shall be deemed null with satisfaction of both parties without any financial liability on either party. In case the team remains in the professional league, this contract shall be deemed in force and valid"*.

- According to Article 13.13 of the Employment Agreement, *"[s]hould the [Appellant] terminate this contract while effective, it shall pay to the [Player] the remaining contract value for the season of termination"*.

- Article 13.14 of the Employment Agreement states that *"[s]hould the [Player] terminate this contract while effective, he shall pay to the [Appellant] the remaining contract value in full from date of termination"*.

C. The end of the employment relationship between the Appellant and the Player

9. On 6 December 2009, the Player was subject to an in-competition doping control. The laboratory which conducted the analysis of the Player's samples identified the presence of 19-norandrosterone at a concentration which constituted an Adverse Analytical Finding.

10. On 31 December 2009, the Player was informed of his positive results and provisionally suspended.

11. It is undisputed that as from 1 January 2010, the Appellant suspended the payment of the Player's contractual salary. At the hearing before the Court of Arbitration for Sport, the Appellant explained that the salaries were always paid in cash and, due to the Player's absence, it was not in a position to hand him his wages. At that moment, the Appellant had already paid the Player USD 380,000, *i.e.* the contractually agreed advance payment of USD 200,000, plus USD 180,000 corresponding to six months' salary.

12. On 10 January 2010, the Player asked the Appellant to be authorized to fly to Morocco and Tunisia in order to undergo tests to be carried out by medical centres *"specialized in Cells and Hormones"*. In his written application, he committed himself to come back *"as soon as possible within one week"*.

13. It is undisputed that the Appellant gave its authorisation to the Player, who only returned to Ras Al-Khaimah on or about 10 February 2010.

14. In a decision dated 16 February 2010, the General Authority of Youth & Sports Welfare of the United Arab Emirates (hereinafter the "NADO") found the Player guilty of an anti-doping rule violation and imposed upon him a two-year ban starting 31 December 2009.

15. On 16 February 2010, the Player asked the Appellant to be authorized to leave the next day and to travel to Morocco in order to consult with his lawyer on the next course of action. He guaranteed that he would come back *"within 21 days from the date of travel"*. The requested permission was granted.

16. It is undisputed that the Player never returned to the Appellant.

17. On 2 March 2010, FIFA extended NADO's decision of 16 February 2010 to have worldwide effect.

18. At the end of the 2009/2010 season, the Appellant's first team was relegated to the second division of its national league.

19. On 1 September 2010, NADO issued a new decision, annulling the Player's suspension.

20. On 9 September 2010, the Player entered into a new employment relationship with Raja Club, *i.e.* the Player's former club before his transfer to the Appellant.

21. On 10 September 2010, the Player's International Transfer Certificate (ITC) was requested by the FRMF on behalf of Raja Club. As the Appellant failed to reply to such request within the given deadline, the Player was provisionally registered with Raja Club.

22. On 18 October 2010, the Player's legal representative informed UAEFA that his client had been cleared of doping charges and was allowed to play again. However, he explained that the Player did not want to remain at the services of the Appellant. In this respect, he emphasized that, on the basis of Article 13.3 of the Employment Agreement and considering that the Appellant had been relegated to the second division of its national league, the Player became a free agent and was therefore entitled to *"move immediately to any club of his choice on a worldwide basis"*. In addition, and according to the Player's legal representative, the Appellant was not in a position to object to the Player's departure for another club as it did not respect any of its contractual obligations during the procedure initiated against his client with regard to his alleged doping offense. In particular, the Appellant failed to pay the Player's salary and deprived him from his car and apartment.

D. Proceedings before the FIFA Dispute Resolution Chamber

23. On 3 January 2011, the Appellant initiated proceedings with the FIFA Dispute Resolution Chamber (hereinafter the "DRC") to order the Player to pay in its favour an amount of USD 1,690,000 plus 5% interest *p.a.* as from the date of the claim, corresponding to *"the remaining value of the [Employment Agreement] as from 17 February 2010, pursuant to art. 13 par. 14 of the [Employment Agreement]"*. Furthermore, it requested a sporting sanction to be imposed upon the Player.

24. The Player lodged a counter-claim against the Appellant, requesting to be awarded the total amount of USD 300,000 *"as compensation for breach of contract, taking into account his salaries and*

benefits for the rest of the contract, as well as the moral damage caused to him by the [Appellant]".

25. Raja Club, which was admitted into the proceedings as *"intervening Party",* was requested to provide the DRC with its position as regards to the respective claim of the Appellant and the Player. It contended that that there was no reason for it to be involved in the dispute.

26. In a decision dated 7 February 2014 (hereinafter the "Appealed Decision") and taking into account the fact that the Player failed to resume his activities with the Appellant on two occasions (*i.e.* on 18 January 2010 after the expiry of the absence authorization of 10 January 2010 and on 10 March 2010 after the expiry of the authorization of 17 February 2010), the DRC came to the conclusion that the Player had prematurely terminated the Employment Agreement without just cause. Under these circumstances, the DRC found that the Player was liable to pay compensation to the Appellant for breach of the contract.

27. As regards to the calculation of the compensation, the DRC made the following findings:

- The DRC held that the Employment Agreement did not contain a provision by means of which the Parties had beforehand agreed on an amount of compensation payable in the event of breach of contract. In particular, it found that Article 13 para. 14 of the Employment Agreement *"could not be taken into account for the calculation of compensation, due to its lack of reciprocity, i.e. it does not provide for compensation in case of breach of contract by the club".*

- In compliance with Article 17 of the applicable Regulations for the Status and Transfer of Players, the DRC took into account the remuneration of the Player and the residual duration of the Employment Agreement. In this regard, the DRC found that Article 13 para. 3 of the Employment Agreement was binding upon the Parties and that the requirements of this provision were met. As a consequence, the DRC *"deemed that such clause is applicable in the present dispute and that the contract should be considered as automatically terminated at the end of the 2009/2010 season".*

- In light of the foregoing consideration, the DRC held that *"at the time of the termination of the contractual relationship on 10 March 2010, the contract would run for another 3 months, in which the player would be entitled to remuneration in the total amount of USD 90,000. Consequently, the [DRC] concluded that the remaining value of the contract as from its early termination by the [Player] until its expiry as par art. 13 par. 3 amounted to USD 90,000".*

28. However, bearing in mind a) that between 1 January and 1 September 2010, the Player was suspended and, therefore, could not have played with the Appellant's team, b) that the Player's absence did not cause any financial loss for the Appellant, which actually suspended the Player's remuneration as of January 2010, c) that the Player's doping-related sanction was overturned as no Adverse Analytical Finding could be held against him, and d) that the Appellant did not request his return after NADO's decision of 1 September 2010, the DRC decided to reduce the compensation from USD 90,000 to USD 60,000.

29. The Appealed Decision does not contain any consideration with reference to the possible imposition of a disciplinary sanction upon the Player, who was found to be in breach of

contract without just cause during the protected period.

30. As a result, on 7 February 2014, the DRC decided the following:

> *"1. The claim of the [Appellant] is partially accepted.*
>
> *2. The [Player] is ordered to pay to the [Appellant] compensation in the amount of USD 60,000, plus 5% interest p.a. as from 3 January 2011 until the date of effective payment,* ***within 30 days*** *as from the date of notification of this decision.*
>
> *3. The Intervening Party [Raja Club] shall be held jointly and severally liable for the payment of the aforementioned amount.*
>
> *4. In the event that the amount due to the [Appellant] in accordance with the above-mentioned number 2., plus interest, is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> *5. Any further claims lodged by the [Appellant] are rejected.*
>
> *6. The counterclaim of the [Player] is rejected. (…)".*

31. On 18 July 2014, the Parties were notified of the Appealed Decision.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 8 August 2014, the Appellant filed its statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS") in accordance with Article R47 *et seq*. of the Code of Sports-related Arbitration, 2013 edition (hereinafter the "Code").

33. On 17 August 2014, the Appellant amended its statement of appeal.

34. On 18 August 2014, the Appellant filed its appeal brief in accordance with Article R51 of the Code.

35. On 22 August 2014, the CAS Court Office acknowledged receipt of the Appellant's statement of appeal, of its appeal brief, of its payment of the CAS Court Office fee and took note of its nomination of Mr José Juan Pintó Sala as arbitrator. It invited the Respondents to provide their position with regard to a) the consolidation of the present proceeding with the case *CAS 2014/A/3697 Hassan Tir v. Emirates Cultural and Sports Club*, initiated after the appeal lodged by the Player with respect to the Appealed Decision, and b) the possibility of submitting the dispute to CAS mediation. The CAS Court Office also requested the Respondents to jointly nominate an arbitrator and to submit an answer. The CAS Court Office noted that the Appellant chose English as the language of the arbitration. In this respect, it informed the Respondents that unless they objected within three days, the procedure would be conducted in English.

36. None of the Respondents took any specific position as to the language of the arbitration within the given deadline.

37. On 26 August 2014, FIFA asked the CAS Court Office to fix the time limit for the filling of its answer until after the Appellant's payment of its share of the advance of costs.

38. Thereafter, the Respondents confirmed that they agreed on the appointment of Prof. Petros C. Mavroidis as arbitrator and on the consolidation of the present procedure with the case *CAS 2014/A/3697 Hassan Tir v. Emirates Cultural and Sports Club*.

39. On 27 August 2014, the CAS Court Office informed the Parties that in view of the position expressed by FIFA, no CAS Mediation would be initiated and the proceeding would continue under the CAS Appeals Arbitration rules.

40. On 1 September 2014, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to consolidate the present procedure with the case *CAS 2014/A/3697 Hassan Tir v. Emirates Cultural and Sports Club* and confirmed that FIFA's deadline to file its answer was suspended pending the Appellant's payment of its share of costs.

41. Eventually, the Player's appeal in the case *CAS 2014/A/3697 Hassan Tir v. Emirates Cultural and Sports Club* was deemed withdrawn and this procedure was removed from the CAS roll.

42. On 12 September 2014, the Player and Raja Club filed their respective answer in accordance with Article R55 of the Code. Raja Club's answer was in French.

43. On 17 September 2014 and in light of the fact that the proceedings were conducted in English, the CAS Court Office granted five days to Raja Club to file an English version of its answer.

44. On 19 September 2014, Raja Club confirmed to the CAS that it would only proceed in French.

45. On 8 October 2014, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of advance of costs and granted a 20-day deadline to FIFA to file its answer. Separately, the CAS Court Office observed that Raja Club failed to file an English version of its answer as requested on 17 September 2014. *"Consequently, [Raja Club's] answer is rejected and will not be made part of the file"*.

46. On 24 October 2014, Raja Club requested that its answer in French be admitted to the file. The same day, the CAS Court Office invited the Appellant, the Player and FIFA to comment on Raja Club's application. In view of the conflicting positions of the Appellant and of FIFA in this regard, the CAS Court Office informed the Parties that the issue would be decided upon by the Panel, once constituted.

47. On 28 October 2014, FIFA filed its answer in accordance with Article R55 of the Code.

48. On 29 October 2014, the CAS Court Office invited the Parties to state, by 5 November 2014, whether their preference was for a hearing to be held. Separately, it informed them that the Panel to hear the case had been constituted as follows: Prof. Dr. Martin Schimke, President of the Panel, Mr José Juan Pintó Sala and Prof. Petros C. Mavroidis, arbitrators.

49. On 6 November 2014, the CAS Court Office observed that the Appellant as well as FIFA confirmed that they preferred for the matter to be decided solely on the basis of the Parties' written submissions, whereas neither the Player nor Raja Club expressed any opinion with regards to a hearing. Separately, it informed the Parties that the Panel decided to allow Raja Club to submit an English translation of its answer no later than 14 November 2014.

50. On 13 November 2014, Raja Club filed an English translation of its answer.

51. On 20 November 2014, the Parties were informed that the Panel had decided to hold a hearing, which was scheduled for 26 January 2015, with the agreement of the Parties, with the exception of Raja Club, which confirmed that it would not attend the hearing as it would be conducted in English and as it did not want to bear the corresponding costs.

52. On 19, 20, and 23 December 2014, the Player, the Appellant, Raja Club and FIFA respectively signed and returned the Order of Procedure in this appeal.

53. The hearing was held on 26 January 2015 at the CAS premises in Lausanne, Switzerland. The Panel members were present and assisted by Mr Brent J. Nowicki, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

54. The Parties did not raise any objection as to the composition of the Panel.

55. The following persons attended the hearing:

- The Appellant was represented by its legal counsel, Mr Jan Kleiner.
- The Player was not present but was represented by an acquaintance, Mr Amine Moussadik, as well as by his legal counsel, Mr Michel Zen Ruffinen.
- FIFA was represented by its legal counsel, Ms Livia Silva Kägi.

56. As announced, Raja Club did not attend the hearing.

57. No witness was called to testify.

58. The Panel heard the detailed submissions of the Parties. After the Parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course. At the conclusion of the hearing, all Parties accepted that their rights before the Panel had been fully respected. The Panel reserved its award, which takes account of all the arguments and material admitted before it including, but not restricted to, those summarised above.

IV. SUBMISSIONS OF THE PARTIES

(i) The Appeal

59. The Appellant submitted the following requests for relief:

> *"In view of all the above mentioned factual and legal arguments, [the Appellant] hereby requests the Panel to:*
>
> 1. *Accept this appeal against the decision of the FIFA Dispute Resolution Chamber dated 7 February 2014 with ground given to the Parties on 21 July 2014.*
> 2. *To adopt an award annulling the said decision and adopt a new one stating that the Appellant is entitled to receive the amount of USD 1,690,000 from the [Player] as per the provided and agreed contractual clause (13.14), for breach of contract without just cause of Mr. Hassan Tir, or alternatively,*
> 3. *To in any case adopt an award stating that the Appellant is entitled to receive compensation from the [Player] as per all objective criteria of this dispute, according to article 17.1 of the FIFA Regulations for the Status and Transfer of Players which are:*
>
> - *USD 1,690,000 as for the remaining value of the player's contract*
> - *USD 361,111 as for non-amortized transfer fee*
> - *USD 600,000 as sport-related damage as for the loss of the value of the services of the player*
>
> 4. *To include Al Raja Athletic Club as jointly and severally liable for the payment of the compensation together with the [Player].*
> 5. *To condemn the [Player] with sporting sanction of four months ban without playing official matches.*
> 6. *To condemn Al Raja Athletic Club with a sporting sanction of two consecutive registration periods without registering any new players.*
> 7. *To condemn the Respondents with a 5% interest rate per annum as from the moment Mr. Hassan Tir breached the contract, this is as from 10 March 2010.*
> 8. *To fix a sum of 20,000 CHF to be paid by the Respondents to the Appellant to help the payment of its defense fees and costs.*
> 9. *To condemn the Respondents with the payment of the whole CAS administration and the Arbitrator fees".*

60. The submissions of the Appellant, in essence, may be summarized as follows:

- The Player terminated the Employment Agreement by not returning to Ras Al-Khaimah and by not resuming his activities with the Appellant as from 10 March 2010; *i.e.* after the expiry of the authorization dated 17 February 2010. *"[T]he Appellant tried to contact him by telephone but it was absolutely impossible".*

- The Appellant showed great support to the Player as it let him fly twice to Morocco to prepare his defence in his doping case. The first time, the Player already failed to return to the Appellant at the agreed time. The second time, he never came back.

- The Player had no just cause to prematurely terminate the Employment Agreement. The Appellant had always complied with its contractual commitments.

- As regards to the compensation, the DRC was wrong when it found that Article 13.14 of the Employment Agreement was not applicable as it allegedly lacked reciprocity. As a matter of fact, this provision governs the unilateral breach by the Player, whereas Article 13.13 regulates the unilateral breach by the Appellant. It *"was the intention of the Parties to provide in the [Employment Agreement], in accordance with Article 17.1 of FIFA Regulations, the consequences for unilateral termination without just cause by either Party. In this sense, clauses 13.13 and 13.14 shall undisputedly be considered as buyout or penalty clauses, intended to compensate the Party which suffered the breach. Obviously, the consequences for both Parties are not the same. The appellant had invested USD 500,000 to acquire the [Player] and hence, it was the Party which could suffer a bigger damage in case of unilateral termination without just cause (…)".* In addition, this regime was freely agreed between the parties to the Employment Agreement and should be binding upon them under the *pacta sunt servanda* principle.

- Under Article 13.14 of the Employment Agreement, the Appellant is entitled to receive USD 1,690,000:

    - Remaining salaries 2009/2010: USD 90,000
    - Remaining salaries 2010/2011: USD 700,000
    - Remaining salaries 2011/2012: USD 900,000

- The Appellant is also entitled to USD 361,111 corresponding to the non-amortized transfer fee and USD 600,000 *"as compensation for the loss of the value of the player".*

- The DRC was also wrong to take into account Article 13.3 of the Employment Agreement (according to which the Player becomes a free agent, should the Appellant be relegated to a lower division at the end of the first season). As a matter of fact, the Player prematurely terminated the Employment Agreement before the end of the 2009/2010 season. At that moment, the employment relationship was still effective until 30 June 2012 and the damage must be calculated accordingly.

- The Player breached the Employment Agreement without just cause during the protected period. A disciplinary sanction should therefore be imposed upon him.

- Raja Club is jointly and severally liable for the damages incurred by the Appellant.

(ii) The Answers

a) The Player

61. The Player filed an answer, with the following requests for relief:

> *"The [Player] refers in full to his own conclusions as they appear in the appeal brief that he has sent to CAS on 18 August 2014 and obviously therefore rejects all the ones that are taken by the Appellant to this case in the appeal brief that he herewith answers".*

62. The submissions of the Player may, in essence, be summarized as follows:

- The following observations can be made on the basis of the Appellant's submissions:
  - The Appellant had never tried to contact the Player when it realized that he failed to return at the agreed time after his first trip to Morocco.
  - Likewise, the Appellant had never tried to contact the Player when it realized that he would never come back after his second trip to Morocco. A *"unique attempt to contact [the Player] by telephone – if effectively realized, what needs to be evidenced – may in no way be considered as sufficient in the circumstances that the Club tries to prevail himself from"*. In other words, the Appellant has never formally requested the Player's return after 10 March 2010.
  - The Appellant also failed to request the Player's return after the cancellation of NADO's sanction on 1 September 2010.
- Under these circumstances, the Appellant *"may not seriously sustain that it has considered that the employment contract has been breached by the player simply after having allegedly tried to "telephone" him "without success" because he had not come back from an authorized stay abroad to prepare his defence against wrong doping accusations while he was anyway suspended".*
- Contrary to its allegations, the Appellant did not provide any support to the Player when he was facing accusations of doping, which proved to be false. It *"neglected to inform the [Player] of his rights and to help him while the doping infringement procedure was underway, stopped to provide him with any benefits (salary, accommodation, car, etc) at a stage where the player had not even been told that he had allegedly committed a breach and what were his rights to defend himself[.] The unique attitude of [the Appellant] that has proved to be helpful is the authorization that it has given twice to the player to fly to his home country to prepare his defence, attitude that did not cost too much to the club in question since [the Player] was anyway provisionally suspended and hence was not able to play any official match for the club in the meantime".*
- Article 13.14 of the Employment Agreement is certainly not applicable as it imposes upon the Player obligations, which are completely out of proportion to the Appellant's obligations arising from Article 13.13 of the same contract.

- The Appellant has not suffered any damages and is therefore not entitled to any compensation. *"It is the player that has been the sole victim of the wrong development of the contractual situation with the club: Mr Tir has been left with no resources and has never been notified by the club with a decision indicating why his salary has not been paid anymore as from 01.01.2010 (all his attempts to get in touch with the club management in this respect have been vain)"*.

- The Player entered into a new employment relationship only two months and nine days after the Employment Agreement became null and void due to the relegation of the Appellant to the second division of its national league.

b) Raja Club

63. Raja Club filed an answer with the following requests for relief:

> *"Given the foregoing, [Raja Club] is honored [sic] to conclude what follows on basis of the decision of the Court of Arbitration for Sport*
>
> *1- The appeal lodged by the [Appellant] against the decision of the Dispute Resolution Chamber of the February 7, 2014 is inadmissible.*
>
> *2- Subsidiarily, the appeal lodged by the [Appellant] against the Dispute Resolution Chamber on February 7, 2014 is rejected.*
>
> *3- All costs of the present arbitration shall be borne by [the Appellant].*
>
> *4- [The Appellant] must pay to [Raja Club] a contribution of the costs incurred by this latter for the needs of this proceeding, [Raja Club] reserves itself the right to specify the amount in the hearing or immediately after, if necessary on the arbitral panel request"*.

64. Raja Club summarized its own submissions as follows:

> *"[B]ased on the following evidences (…) the decision of the FIFA CRL should not be reformed in favor [sic] of the appellant.*
>
> *1- No opposition of the [Appellant] has been reported within the time on the TMS system.*
>
> *2- [Raja Club] has complied with the instructions issued by the RSTJ.*
>
> *3- The [Appellant] has been at the end of the 2009-2010 sports season relegated to the LOWER division and according to the release clause of the contract between the player and the club, the said contract will be cancelled without the payment of any compensation of one part to the other.*
>
> *4- The amount of compensation that [Raja Club] has to pay is wrong as it ignores the concomitant absence of the appellant"*.

c) FIFA

65. FIFA filed an answer, with the following requests for relief:

> *"1. That the CAS rejects the present appeal and confirms the presently challenged decision passed by the Dispute Resolution Chamber (hereinafter: the DRC) on 7 February 2014 in its entirety.*
>
> *2. That the CAS orders the Appellant to bear all the costs of the present procedure.*
>
> *3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand".*

66. The submissions of FIFA may, in essence, be summarized as follows:

- FIFA fully endorses the findings of the DRC.

- The Player prematurely terminated the Employment Agreement without just cause and is therefore liable to pay compensation to the Appellant.

- The DRC correctly calculated the compensation to be awarded to the Appellant.

- Article 13 para. 14 of the Employment Agreement cannot be applied without taking into account Article 13 para. 3 of the same contract.

- At the moment it took its decision, the DRC was not aware of the terms of the Transfer Agreement, a copy of which was submitted for the first time in the present arbitration procedure. *"Therefore, we deem that the [Appealed Decision] should be considered as correct and justified, based on all the information and documentation provided by the parties to [the DRC] until the date of decision".*

- Since the decision of the DRC must be affirmed, the Appellant's request for sporting sanctions against the Player must be dismissed.

- According to the applicable regulations, the DRC has the discretion to decide whether it wants to impose a disciplinary sanction on a player, who was found to be in breach of contract without just cause during the protected period. After *"having properly taken into account the particularities and specific circumstances of the affair at stake, as recalled above in the present answer and exposed in detail in the challenged decision, the DRC has refrained from imposing a sporting sanction on the player. In order to respect the DRC's scope of discretion in this regard taking into account the aforementioned position of the CAS, and considering the very particular and specific facts to the present matter, the decision of the DRC in this respect is justified and has to be upheld".* At the hearing before the CAS, Ms Livia Silva Kägi explained that FIFA refrained from imposing a sanction upon the Player as he had already served a nine-month suspension for a doping offense, of which he was cleared.

V. ADMISSIBILITY

67. The appeal is admissible as the Appellant submitted it within the deadline provided by Article R49 of the Code as well as by Article 63 para. 1 of the FIFA Statutes (editions 2010 or 2011) or Article 67 para. 1 of the current FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VI. JURISDICTION

68. Article R47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

69. The jurisdiction of CAS, which is not disputed, derives from Articles 62 *et seq.* of the FIFA Statutes (editions 2010 or 2011) or Articles 66 *et seq.* of the current FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.

70. It follows that the CAS has jurisdiction to decide on the present dispute.

71. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VII. APPLICABLE LAW

72. Article R58 of the Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

73. Pursuant to Article 62 para. 2 of the FIFA Statutes, which were in force in 2010 and 2011 or pursuant to Article 66 para. 2 of the current FIFA Statutes, *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

74. Regarding the issue at stake, the Parties have not agreed on the application of any specific national law. As a result, subject to the primacy of the applicable FIFA regulations, Swiss Law shall apply complementarily.

75. It can be observed that, in their respective submissions, the Parties adopted the same approach; *i.e.* they agreed on the application of the relevant FIFA regulations, and accessorily, Swiss law.

76. The case at hand was submitted to the DRC on 3 January 2011, i.e. after 1 October 2010 which is the date when the revised FIFA Regulations for the Status and Transfer of Players, edition 2010, came into force (hereinafter the "RSTP"). As a consequence, the case shall be assessed according to these regulations (see Article 26 para. 1 of all the subsequent editions of the FIFA Regulations for the Status and Transfer of Players).

VIII. MERITS

77. The specificity of the present dispute lies in the fact that neither the Player nor the Appellant terminated the employment relationship by way of regular, explicit and/or written termination notice. While the Employment Agreement was indisputably still valid, the Player left the Appellant in February 2010, to return to his country of origin and was not heard of until September 2010, when his ITC was requested by the FRMF. The Player has never made any complaint about possible failure of the Appellant to pay his salaries or other benefits. Throughout the Player's long absence, the Appellant did not make contact with him (at least the contrary was not established) and/or did not formally request him to carry out his contractual obligations.

78. On the one hand, the Appellant is of the opinion that the Player terminated the Employment Agreement by not resuming his professional activities on 10 March 2010; *i.e.* after the expiry of the authorization dated 17 February. In this regard, the Appellant contends that the Player did not have any just cause not to perform his side of the Employment Agreement.

79. On the other hand, it is the Player's case that his attitude was legitimate, considering that a) the Club had never formally requested his return after 10 March 2010 or b) after he was found to be innocent of any doping offense on 1 September 2010, c) the Appellant suspended the payment of his wages including all benefits and contributions-in-kind as from 1 January 2010, and d) the Appellant did not assist him in his fight against the groundless doping charges raised against him. With his line of arguments, the Player seems to suggest that, in spite of the Appellant's alleged breaches, he waived his right to terminate with immediate effect the Employment Agreement and chose to remain bound by the said contract.

80. The main issues to be resolved by the Panel are:

A) Has the Employment Agreement been prematurely terminated and if yes, by whom and when?

B) Was the premature termination of the Employment Agreement based on a just cause?

C) Is the injured party entitled to any compensation?

D) Must a disciplinary sanction be imposed upon someone?

A) Has the Employment Agreement been prematurely terminated and if yes, by whom and when?

(i) In general

81. In the present case, the Employment Agreement is a fix-term contract valid for three seasons (2009/2010 to 2011/2012), effective from 1 July 2009 until 30 June 2012. However, and pursuant to Article 13.3 of the Employment Agreement, *"[i]n case of the first team drops to the first class during the first season hereof, the contract shall be deemed null with satisfaction of both parties without any financial liability on either party. In case the team remains in the professional league, this contract shall be deemed in force and valid"*.

82. There is no other contractual clause which could bring the employment relationship to an end before the expiration of the agreed period. Nevertheless, Articles 13.13 and 13.14 govern the situations where a party to the contract prematurely puts an end to the Employment Agreement. According to this document, such a termination is not subject to compliance with a particular formality.

83. The RSTP provide so far as material as follows:

> *"**Article 13 Respect of contract***
>
> *A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.*
>
> ***Article 14 Terminating a contract with just cause***
>
> *A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*
>
> ***Article 15 Terminating a contract with sporting just cause***
>
> *(…)*
>
> ***Article 16 Restriction on terminating a contract during the season***
>
> *A contract cannot be unilaterally terminated during the course of a season"*.

84. According to Swiss law, fixed-term contracts terminate without requiring notice upon the expiry of the agreed period (Article 334 para. 1 of the Swiss Code of Obligations - hereinafter "CO") and are presumed without any trial period, as such a period shall be introduced and agreed upon by written agreement (FF 1984 II 620; RSJ 1999, 253; TERCIER/FAVRE, Les contrats spéciaux, 4th ed., Genève/Zurich/Bâle 2009, p. 545, n. 3663; WYLER R., Droit du travail, 2nd ed., Berne 2008, p. 446).

85. Fixed-term contracts cannot come to an end before the expiration of the agreed period unless the contract has been terminated by mutual agreement or there is a just cause for termination

of the employment relationship or if the employer becomes insolvent (ATF 110 II 167; WYLER R., *op. cit.*, p. 436). In the presence of a just cause, the employer or the employee may at any time terminate with immediate effect the contract (Article 337 para. 1 CO). Such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause (ATF 130 III 28; ATF 116 II 145; ATF 116 II 142; ATF 112 II 41).

(ii) In particular

86. In the present case, neither the Appellant nor the Player has alleged that the Employment Agreement had been terminated by mutual agreement. In the eyes of the members of the Panel, the fact that none of them raised this possibility demonstrates clearly that they did not intend to put an end to their employment relationship by tacit consent. Under these circumstances, there is no reason to address this aspect any further.

87. Consequently, the Panel has to examine a) whether the Player's absence constituted a unilateral termination of the contract and b) whether the Appellant was somehow in breach of the terms of the Employment Agreement in such a manner that the Player was entitled not to perform his side of the contract anymore. This second issue will be addressed under B) hereafter.

88. The RSTP do not contain any provision regarding the consequences of an employee's absenteeism. Swiss law is therefore applicable to this issue, which is governed by Article 337d CO. This Article reads as follows:

> *"**Art. 337d Failure to take up post and departure without just cause***
>
> *1 Where the employee fails to take up his post or leaves it without notice without good cause, the employer is entitled to compensation equal to one-quarter of the employee's monthly salary; in addition he is entitled to damages for any further losses.*
>
> *2 Where the employer has suffered no losses or lower losses than the value of the compensation stipulated in the previous paragraph, the court may reduce the compensation at its discretion.*
>
> *3 Where the claim for damages is not extinguished by set-off, it must be asserted by means of legal action or debt enforcement proceedings within 30 days of the failure to take up the post or departure from it, failing which it becomes time-barred".*

89. According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319 para. 1 CO). If the employee decides to stop carrying out his work, he must warn his employer without delay in order to safeguard the latter's legitimate interests (Article 321a para. 1 CO). The employer may reasonably expect from an employee who suddenly abandons his position to be immediately informed by the latter of his intentions. In this light, if the employee fails

to make contact with his employer for an extended period of time, the employer can, in good faith, assume that he is no longer interested in keeping his position (decisions of the Swiss Federal Court of 14 March 2002, 4C.370/2001, consid. 2a; of 24 August 1999, 4C.143/1999, consid. 2a). If the employee fails to appear at work for a relatively short period of time, he cannot be dismissed for failure to attend work on time before a prior warning and a further episode (ATF 121 V 277, consid. 3.a).

90. There is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause (ATF 108 II 301, consid. 3 b; decisions of the Swiss Federal Court of 21 December 2006, 4C.339/2006, consid. 2.1; of 6 July 2005, 4C.155/2005, consid. 2.1; of 14 March 2002, 4C.370/2001, consid. 2a; WYLER R., *op. cit.*, p. 499; AUBERT G., in Commentaire romand, Code des obligations, vol. I, 2nd ed., 2012, ad art. 337d, N. 2, p. 2107). Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith – assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned (ATF 121 V 277).

91. In the present case, on 16 February 2010, the Player asked the Appellant to be authorized to leave the next day and to travel to Morocco. He committed himself to come back *"within 21 days from the date of travel"*; *i.e.* on 10 March 2010. The Player a) never returned to the Appellant and b) did not try to contact the latter or c) to inform it of his intentions, d) to discuss a possible end of contract, or e) to claim the payment of his wages. As a professional player, he could not ignore that he was bound to the terms of the Employment Agreement, which specifically state that he must *"comply with living and residing in Ras Al Khaimah"*, *"participate in all matches, training sessions and all activities related thereto"* unless otherwise required by the Appellant, *"[n]ot (…) enter in any negotiations with any other club throughout the term hereof, except through his current club with permission in writing"*, *"[n]ot (…) leave the U.A.E without a written permission from the Club President, Secretary General or their deputy"*.

92. In light of the foregoing, the Panel comes to the conclusion that the Player unilaterally and prematurely terminated the Employment Agreement.

93. As regards the date of the termination (10 March 2010), the Player knew that he was in breach of his contractual obligations. From the perspective of the Appellant, it was aware of the Player's "resignation" when it unequivocally occurred to it that the latter would never come back. Between March 2010 and the end of the 2009-2010 season, several months went by, without the Player having been seen or heard of by the Appellant, which, in good faith, was entitled to think that the Player unilaterally withdrew from the Employment Agreement.

94. Retrospectively and in view of the circumstances, it is very likely that ever since 10 March 2010, it was in the Player's intention never to return to the Appellant. As a result, the Panel finds that the Player terminated the employment relationship on 10 March 2010.

B) Was the premature termination of the Employment Agreement based on a just cause?

95. For the reasons set forth above, the Panel holds that the Player unilaterally and prematurely terminated the Employment Agreement.

96. However, the Player contends that he was entitled not to carry out his contractual obligations as the Appellant suspended the payment of his wages including all benefits and contributions-in-kind as from 1 January 2010 and as the Appellant had never formally requested his return after 10 March 2010 or after he was found to be innocent of any doping offense on 1 September 2010. Moreover, he blames the Appellant for not having supported him more actively in his fight against the doping charges raised against him.

97. According to Article 14 of the RSTP *"[a] contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*. This provision is substantially identical to Article 14 of the RSTP edition 2005.

98. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 14, page 39):

> *"1 The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.*
>
> *2 The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally. The following examples explain the application of this norm.*
>
> *3 Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned.*
>
> *4 (…)*
>
> *5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.*
>
> *6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".*

99. In a footnote, the FIFA commentary on the RSTP establishes that the above examples are based on simplified decisions of the DRC and that under *"normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract"*.

100. The persistent failure of an employer to pay the salaries without just cause is an unjustified breach of the employment contract. In such a situation, if the employer fails to pay the outstanding wages despite the formal notice of the employee demanding performance, the latter may unilaterally terminate the contract (Decision of the Swiss Federal Tribunal dated 2 February 2001, 4C.240/2000; JAR 1985 146; RFJ 1994 306; ZR 2000 220; TERCIER/FAVRE, *op. cit.*, p. 561, n. 3757). In this regard, the Panel endorses the position articulated by a CAS panel in the matter CAS 2006/A/1180:

> *"The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893 […]; CAS 2006/A/1100 […] marg. no. 8.2.5 et seq.)".*

101. In the present case, it is undisputed that the Appellant carried out correctly and extensively all of his contractual obligations until 31 December 2009. Starting this day, the following sequence of events occurred:

- The Player was suspended as of 31 December 2009.
- He flew to Morocco on or about 10 January 2010.
- He came back to the Appellant on 10 February and left 6 days later on a permanent basis.

102. In 2010 and during the second half of the 2009-2010 season, the Player not only was suspended but also was present only for a total of 16 days. In this regard and notwithstanding the question of whether and to what extent under the applicable employment law the Club has a right of retention/right to refuse to perform its contractual obligations due to the impossibility on the part of the Player to perform on account of his suspension, the latter has never established:

a) that he complained to the Appellant about any non-payment of his salary or that he served a notice or a warning in this respect;

b) the grounds, upon which his return (either after 10 March or 1 September 2010) to the Appellant was conditional upon the latter's express request;

c) that he called for specific help from the Appellant other than the authorizations to leave for a few days in order to prepare his defence against the anti-doping accusations brought against him. In this regard, it is undisputed that the Player asked the Appellant for permission to travel to Morocco and the latter agreed and actually paid for the plane ticket. There is no evidence whatsoever that the Player solicited further support on the part of his employer. In addition and in the specific case at hand, the Panel sees no legal obligation deriving from the Employment Agreement and/or the law to do more than to authorize the Player's absence on two occasions for the purpose of further testing abroad.

103. The Panel observes that the Player's attitude is somewhat inconsistent and contradictory. On the one hand, he suggests that given the persistent and severe nature of contractual non-compliances by the Appellant, he was entitled to stop performing his side of the Employment Agreement. Nevertheless and on the other hand, the Player remained silent and completely passive during more than six months after the payment of his last monthly salary.

104. Based on the foregoing considerations, the Panel holds that the Appellant did not fail to comply with a major part of its contractual obligations and the Player did not meet the specific requirements to terminate the Employment Agreement (as expressed in the matter CAS 2006/A/1180 – quoted hereabove). In particular, the Player did not give any warning to his employer and he has never established how the Appellant's alleged contractual failure affected his situation to a point where he could not be expected to remain in an employment relationship with the Appellant.

105. In light of the above considerations, the Panel finds that the Player did not have a just cause to unilaterally and prematurely terminate the Employment Agreement.

C) Is the injured party entitled to any compensation?

106. The party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract. The situation is governed by Article 17 of the RSTP (see FIFA commentary on the RSTP (edition 2005), ad. Article 14, no. 6, page 40 and footnote no.63).

107. Article 17 para. 1 of the RSTP reads as follows:

> *"**17 Consequences of terminating a contract without just cause***
>
> *The following provisions apply if a contract is terminated without just cause:*
>
> *1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or*

incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

108. In view of the facts of the present dispute, the Panel refers in particular to the findings of another CAS case with regard to the Article 17 and to the principles outlined therein. The case in question is CAS 2008/A/1519-1520, in which the CAS insisted namely on the following points:

- The termination of a contract without just cause is a serious violation of the obligation to respect an existing contract and triggers the consequences set out in Article 17 para. 1 of the RSTP.
- The purpose of Article 17 of the RSTP is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations. This, because contractual stability is crucial for the functioning of the international football. The deterrent effect of Article 17 of the RSTP shall be achieved through the impending risk for a party to incur disciplinary sanctions, if some conditions are met, and the risk to have to pay compensation for the damage caused by the breach or the unjustified termination.
- As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), *i.e.* it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur.
- By asking the judging authorities to duly consider a whole series of elements, including such a wide concept like *"sport specificity"*, and asking the judging authority to even consider *"any other objective criteria"*, the authors of Article 17 of the RSTP achieved a balanced system according to which the judging body has on one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable. At the end, however, the calculation made by the judging authority shall be not only just and fair, but also transparent and comprehensible.
- With regards to the calculation of compensation itself, the value of the services of a player is only partially reflected in the remuneration due to him, since a club has to make also certain expenditures to obtain such services. In order to calculate the full amount of the value of services lost, one has therefore not simply to take into consideration the amount of outstanding remuneration but one shall take also in account what a club would – under normal circumstances – have to spend on the (transfer) market to contract the services like the ones of the player.

- The salaries that a club is no more obligated to pay to the player for the remaining duration of the contract shall be deducted from the amount of value of the services of the player as they correspond much more to saved expenses than to damage. Therefore, to simply equalize the amount of salaries to be paid by the club to the damage suffered by the same club is not what Article 17 of the RSTP asks the judging body to do and would undermine the compensation foreseen under Article 17 of the RSTP.

109. This reasoning is followed by another case regarding the calculation of the compensation due to Article 17 of the RSTP. The case in question is CAS 2009/A/1856-1857, which covers the situation of a player terminating his contract without just cause while not being able to play because of medical reasons. In this case, the CAS applies the principles outlined in CAS 2008/A/1519-1520. However, it takes into account the specific circumstances of its case and, therefore, it starts considering the situation from the perspective of the money saved by the club, due to early termination of the contract by the player. It holds such an approach consistent with the principle of so-called positive interest. Thus, it determines the remaining salaries from the moment of unjust termination of the contract until the end of the contract as saved money. Further, it holds that due to the atypical setting of the case, the club cannot be expected to be awarded any compensation for the loss of the player's services.

110. It has been established that the Player terminated the contract without just cause and must take responsibility for it.

111. In its request for relief and among other things, the Appellant asks the Panel:

> *"2. To adopt an award annulling the [Appealed Decision] and adopt a new one stating that the Appellant is entitled to receive the amount of USD 1,690,000 from the [Player] as per the provided and agreed contractual clause (13.14), for breach of contract without just cause of Mr. Hassan Tir, or alternatively,*
>
> *3. To in any case adopt an award stating that the Appellant is entitled to receive compensation from the [Player] as per all objective criteria of this dispute, according to article 17.1 of the FIFA Regulations for the Status and Transfer of Players which are:*
>
> - *USD 1,690,000 as for the remaining value of the player's contract*
> - *USD 361,111 as for non-amortized transfer fee*
> - *USD 600,000 as sport-related damage as for the loss of the value of the services of the player".*

112. In accordance with Article 17 para. 1 of the RSTP, the parties to an employment contract may stipulate in the contract the amount of compensation for breach of contract. Where such a clause exists, its wording should leave no room for interpretation and must clearly reflect the true intention of the parties (CAS 2013/A/3091, 3092 & 3093, para. 259).

113. Whether such clauses are called "buy out-clauses", "indemnity" or "penalty clauses" or otherwise, is irrelevant. Legally, they correspond therefore to liquidated damages provisions (CAS 2008/A/1519-1520, para. 68 and references).

114. Hence the Panel has to resolve whether the Employment Agreement contains a penalty clause and whether it is valid. Should this clause be void, the Panel will then need to address how to calculate the compensation.

(i) Is there a penalty clause?

115. According to the Appellant, it is entitled to the payment of the penalty fee set out in Article 13.14 of the Employment Agreement.

116. The DRC held that this provision *"could not be taken into account for the calculation of compensation, due to its lack of reciprocity, i.e. it does not provide for compensation in case of breach of contract by the club"*.

117. In this regard, the Panel observes that not only the findings of the DRC are very succinct insofar as they do not explain on what legal principle the need of reciprocity rests but they also give no consideration to Article 13.13 of the Employment Agreement. As a matter of fact, Article 13.14 governs the consequences of the unilateral breach by the Player, whereas Article 13.13 regulates the consequences deriving from the unilateral breach by the Appellant.

118. These provisions state the following:

> Article 13.13: *"Should the [Appellant] terminate this contract while effective, it shall pay to the [Player] the remaining contract value for the season of termination"*.
>
> Article 13.14: *"Should the [Player] terminate this contract while effective, he shall pay to the [Appellant] the remaining contract value in full from date of termination"*.

119. However, in the present case, the Panel does not need to address the question of the exact legal nature of this clauses in terms of the amount of compensation ("penalty" or "liquidated damage") and/or the issues relating to whether and how a penalty foreseen in Article 13.14 of the Employment Agreement is excessive, as it finds this clause to be null and void.

120. As a matter of fact, Articles 13.13 and 13.14 of the Employment Agreement constitute a disguised way for the Appellant to terminate the contract at the end of each season, without any consequences, whereas the Player does not have such a possibility.

121. In other words, the regime put in place with Articles 13.13 and 13.14 of the Employment Agreement provides the Appellant with the unilateral option to reduce at will its employment relationship with its employee. It is the reverse situation of unilateral option clauses enabling a club to extend an employment contract for a certain period. The validity and enforceability of such an option clause is very disputed (see CAS 2009/A/1856-1857, para. 198; CAS 2007/A/1219, para. 20 *et seq.*).

122. In the precedent TAS 2005/A/983 & 984; para. 60, the CAS Panel evaluated the validity of the unilateral option by reference to the criteria established by PORTMANN W., Einseitige Optionsklauseln in Arbeitsverträgen von Fussballspielern - Eine Beurteilung aus der Sicht der internationalen Schiedsgerichtsbarkeit im Sport, Causa Sport 2/2006, 5.2 a). According to

PORTMANN, the commitment resulting from an unilateral option clause could be admissible if a) the potential maximal duration of the employment relationship is not excessive; b) the option is exercised within an acceptable time before the expiry of the employment agreement; c) one party is not at the mercy of the other party with regard to the content of the employment contract; d) the option clause can only be exercised if there is a compensation for the counter-party; e) the option must be clearly articulated in the original employment agreement so that the player is aware of its existence at the moment of his entering into the employment relationship. Similar criteria were taken into account in the only CAS precedent, which accepted the validity of a unilateral option enabling a club to renew a player's contract (CAS 2005/A/973, para. 16 *et seq*.).

123. In the present case, the parties agreed on a fix-term contract valid for three seasons. However and pursuant to Article 13.13 of the Employment Agreement, *"[s]hould the [Appellant] terminate this contract while effective, it shall pay to the [Player] the remaining contract value for the season of termination"*. On the basis of this provision, should the Appellant terminate the employment relationship at the very end of the 2009-2010 season, the Player would be left unemployed, uncompensated and with little or no time to find a new employer.

124. The regime put in place with Articles 13.13 and 13.14 of the Employment Agreement leads to a system, which disproportionately favours the Appellant, which, in practice, can establish a long-term employment relationship with the Player and rescind it after one year only. With this method, the Appellant can therefore refuse to keep the Player if the latter does not progress as expected but may retain him, should he confirm his sporting qualities and value. Such a system is clearly contrary to the general principles of contractual stability as well as of labour law as it gives the Appellant undue control over the Player, without rewarding him in exchange.

125. Furthermore, and bearing in mind that Swiss law also applies, the Panel refers to Article 335a CO (*"Notice periods must be the same for both parties; where an agreement provides for different notice periods, the longer period is applicable to both parties"*). Because this provision is mandatory (decision of the Swiss Federal Tribunal dated 5 September 2006, 4C.186/2006 considering 2.1; ATF 108 II 115; WYLER R., *op. cit.*, p. 437), the validity of the unilateral option allowing a party to terminate the employment contract after one year, while the other party is bound for the full contract term, is contrary to Article 335a CO.

126. In light of the foregoing, the Panel finds that the reciprocal obligations deriving from Articles 13.13 and 13.14 are so unbalanced that they are therefore null and void.

ii) In the absence of a valid penalty clause, how should the compensation be calculated?

127. For the reasons expressed above, the Panel decided to disregard the application of Articles 13.13 and 13.14 of the Employment Agreement. With this conclusion, the Panel holds that the parties to the Employment Agreement did not *"otherwise provide in the contract"* for a specific sum to be paid by the Player in the event of his unilateral, premature termination of the agreement.

128. Accordingly, the Panel now moves on to the other criteria established under Article 17 of the RSTP to determine how the compensation due by the Player must be calculated.

129. As a starting point before addressing the calculation itself, it must be noted at this stage that since the 2010 amendment of the Code, counterclaims (and cross-appeals) are no longer permitted in appeal proceedings. Specifically, Article R55 of the Code no longer stipulates that a respondent's answer should include any counterclaims. In the case at hand, the Player's original appeal was deemed to have been withdrawn according to Article R64.2 of the CAS Code because of his failure to pay the advance costs within the time period fixed by CAS. Therefore – irrespective of the *de novo* principle set out in Article R57 of the Code – the Panel cannot decide on Player-claims that were not asserted in a procedurally admissible way at the CAS level. However, in the appeal proceedings at hand, the Player (as one of the Respondents) is still requesting a ruling that he does not owe the Appellant any money at all. An award by the Panel of an amount of damages less than that awarded by the FIFA DRC (here: *"(…) USD 60,000, plus 5% interest p.a. as from 3 January 2011 until the date of effective payment (…)"*) would be tantamount to granting the Player what is in fact an inadmissible counterclaim. And to some extent it would also be contrary to the principle of *ne ultra petita*. For said procedural reasons, the Panel has no basis on which to make an award for an amount less than that awarded in the Appealed Decision.

130. However, the fact that the Panel cannot award an amount lower than that awarded in the Appealed Decision does not prevent it from reviewing the reasoning and the calculation made by the DRC. On the contrary, the Panel is obligated to retrace the calculation and, where needed, to establish its own reasoning and calculation with, however, the aforementioned restrictions.

a) The calculation of the money saved by the Appellant due to the Player's breach of the contract

131. Pursuant to the terms of the Employment Agreement and for the 2009-2010 season, the Player was entitled to *"US$ 500,000 (…) of which US$ 200,000 is paid as a contract advance (…). The balance of US$ 300,000 (…) shall be settled as monthly salaries on ten payments, i.e. US$ 30,000 (…) per month"*.

132. It is undisputed that as from 1 January 2010, the Appellant suspended the payment of the Player's contractual salary. At that moment, the Appellant had paid to the Player USD 380,000, i.e. the contractually agreed advance payment of USD 200,000 plus USD 180,000 corresponding to six months' salary. Thus, the Player was contractually entitled to an additional amount of USD 120,000 corresponding to four months' salary relating to January, February, March, and April 2010.

133. When evaluating the money saved by the Appellant, the starting point for calculating the loss is the factor "remaining value of the contract"; therefore the relevant period to be taken into account in the case at hand is the period between the breach of contract without just cause and the automatic termination of the contract at the end of the 2009/2010 season (CAS 2008/A/1519-1520, para. 123 f.; CAS 2009/A/1856-1857, para. 196, 201). Consequently, the

Panel concluded that the remaining salaries owed to the Player as from 10 March 2010 until the end of June 2010 amounted to USD 50,000, corresponding to one and two-thirds months.

134. In order to assess the amounts effectively saved by the Appellant, one must also take into consideration the other benefits that came with the Player's contract; *i.e.* a car and an apartment in Ras Al-Khaimah. The related amounts were not established by the parties.

b) The calculation of the compensation of the Appellant due to the Player's early termination of the Employment Agreement without just cause

135. Pursuant to Article 13.3 of the Employment Agreement, *"[i]n case of the first team drops to the first class during the first season hereof, the contract shall be deemed null with satisfaction of both parties without any financial liability on either party. In case the team remains in the professional league, this contract shall be deemed in force and valid"*.

136. The Appellant claims that the situation must be assessed by taking into account the fact that the Employment Agreement was terminated in March 2010. At that time, the Appellant's team was not relegated to a lower division and, therefore, Article 13.3 of the Employment Agreement could not come into play. Hence and according to the Appellant, its compensation must be calculated on the remaining contractually agreed period, which expired on 30 June 2012.

137. The Panel cannot agree with the Appellant. As set out above, the damage incurred by the Appellant following the Player's termination of the Employment Agreement must be calculated by determining the positive interest; *i.e.* the injured party is to be put in the same position as if the contract had been performed properly, without such contractual violation to occur (CAS 2008/A/1519-1520, para. 86). In other words, the damage consists of the difference between the current financial status and the hypothetical state of the assets without the harmful event (VALLONI/WICKI, Compensation in case of breach of contract according to Swiss law, European Sports Law and Policy Bulletin, 1/2011, p. 153).

138. In the present case, it is undisputed that the Appellant's team was relegated at the end of the 2009-2010 season. If the Player had performed his side of the contract properly, the employment relationship would have come to an end in June 2010. The Panel sees no reason to take into account a longer time frame.

aa) The Remuneration element

139. Through the unjustified termination of a player, the Club loses the value of the services of the employee (CAS 2008/A/1519-1520, para. 91).

140. However and for the reasons set out above, it has been established that the Player was not in a position to play as he was suspended. Hence, due to the very special circumstances of the present case, the Appellant cannot expect to be awarded any compensation for the loss of the Player's services. This is in line with the abovementioned precedent of CAS 2009/A/1856-

1857, para. 204. Both cases are comparable as follows: both players unilaterally and prematurely terminated their contract without just cause, both players completely left the football scene for a couple of months, both players were not in negotiations with another club when terminating their contract, but more importantly, both players were not able to play at the moment they breached their contract and for the rest of their remaining period of contract. Thus, they were not able to deliver their contractual services to their employer.

bb) The fees and expenses paid or incurred by the former club

141. According to Article 17 of the RSTP, the amount of fees and expenses paid or incurred by the Appellant, and in particular those expenses made to obtain the Player, is an additional objective element that must be taken in consideration. Article 17 para. 1 requires those expenses to be amortised over the whole term of the contract. This, independently on whether the club has amortized the expenditures in such a linear way or not (CAS 2008/A/1519-1520, para. 91).

142. The Appellant agreed to pay to Raja Club a transfer fee of USD 500,000. The payment of this sum is not contested.

143. By terminating the Employment Agreement prematurely, the Player did not allow the Appellant to amortize the amount of the transfer fee, which it agreed to pay for the acquisition of his services.

144. The Parties signed a fix-term agreement for three seasons but accepted that it could come to an end already after the first season, should the requirements of Article 13.3 of the Employment Agreement be met. This was indeed the case. Hence, the contract was considered terminated on 10 March 2010, *i.e.* three months and two thirds before the agreed term.

145. As a result, by breaching the contract, the Player did not allow the Appellant to amortize the cost of its investment, thereby causing a financial damage to the club of USD 152,750 (USD 500,000 ./. 12 x 3 2/3).

cc) Extra Replacement Costs

146. The criteria listed in Article 17 para. 1 of the RSTP are non-exclusive. Accordingly, the Panel is called to examine whether in the concrete dispute there are any other objective criteria to be taken into consideration when assessing the amount of compensation due under Article 17 para. 1 of the RSTP. Among such additional objective criteria, the question arises whether the expenses that a club incurs to replace a player that has left prematurely shall be considered (CAS 2008/A/1519-1520, para. 133).

147. As regards to the burden of proof, it is the Appellant's duty to objectively demonstrate the existence of these expenses (Article 8 of the Swiss Civil Code).

148. In the case at hand, it has not been established that the Appellant replaced the Player for the reminder of the 2009/2010 season. Therefore, the Appellant cannot derive any right or compensation under this criterion.

dd) Additional Objective Criteria

149. Following the requirements of Article 17 of the RSTP, the Panel must also examine whether there are other objective elements to consider when determining the level of the compensation to be awarded to the Appellant. Such elements could be for instance the damage incurred by a club, which – because of the premature termination – was not any longer in a position to fulfil some obligations towards a third party, like a sponsor or an event organiser to whom the presence of the player was contractually warranted (CAS 2008/A/1519-1520, para. 148).

150. Here too, the Appellant has not established the existence of any supplementary damages allegedly incurred because of the Player's premature termination of the Employment Agreement without just cause. Therefore, it cannot derive any right or compensation for supplementary damages.

ee) Specificity of sport

151. Sport, similarly to other aspects of social life, has its own specific character and nature and plays its own important role in our society. Similarly, as for the criterion of the *"law of the country concerned"*, the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs but, more broadly, those of the whole football community. Based on this criterion, the judging body shall therefore assess the amount of compensation payable by a party under Article 17 para. 1 of the RSTP, keeping duly in mind that the dispute is taking place in the somehow unique world of sport. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case (CAS 2008/A/1519-1520, para. 151 ss).

152. The present dispute is very atypical from the more common situations where a player unilaterally and prematurely terminates the labour agreement in order to join another employer. What makes the present case so unusual is that the Player left the Appellant and the football scene for numerous months.

153. Obviously, the Player decided not to return to his employer for personal reasons and not because he already was in negotiations with another club. Leaving the Appellant caused him to give up his remaining salary until at least June 2010 (the expiry of the first 2009-2010 season).

154. The Player's attitude is even more peculiar given that he breached the contract at a moment where he was suspended. Instead of remaining at the service of the Appellant and get paid

without playing, he chose not to return to his club and to expose himself to a claim for compensation, making his chances to find another employer all the more complicated.

155. Moreover, the Player entered into a new employment relationship with Raja Club, on 9 September 2010; *i.e.* over two months after the end of the 2009-2010 season (which would have brought the Employment Agreement to an end following the Appellant's relegation to a lower league – see Article 13.3 of the Employment Agreement) and 8 days after he was cleared of doping charges and was allowed to play again.

156. Finally, when the Appellant was aware of the Player's prolonged absence, not only did it not ask him to return to the club in order to train with its team and be present for marketing reasons but also never took any disciplinary measures (as provided under the Employment Agreement) to sanction his absence from training. Much more, the Appellant has never tried to enter into contact with the Player, even when his ban was lifted.

157. From the above, it can be noted that because of the Player's unilateral breach of the Employment Agreement, the Appellant saved USD 50,000 as well as three and two-thirds months worth of rent and of providing a car and other benefits.

158. The Appellant's only established damage consists exclusively of the fact that it was not allowed to amortize the cost of its investment. No other supplementary damage allegedly incurred by the Appellant has been established.

159. Consequently, the difference between what the Appellant saved (USD 50,000) and the non-amortized part of the transfer fee paid (USD 152,750) amounts to USD 102,750.

160. In light of the above and taking into account the peculiar circumstances of the present dispute, the Panel agrees with the DRC that a reduction of the amount of compensation based on the application of the criterion of "specificity of sport" is necessary and fair. The DRC in its Appealed Decision made a reduction from USD 90,000 to USD 60,000. The Panel finds this approach adequate.

161. Due to the procedural reasons set out above, the Panel does not need to discuss whether, by application of the criterion of "specificity of sport" and due to the specific circumstances explained above, the amount should be reduced even more. In any case, despite the slight difference of calculation (USD 90,000 to USD 102,750), the peculiar circumstances of the case at hand justify a reduction to USD 60,000.

ff) Joint and several liability

162. According to Article 17 para. 2 RSTP, *"[i]f a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment"*. The DRC therefore held *"that, in accordance with art. 17 par. 2 of the Regulations, [Raja Club], shall be jointly and serverally liable for the payment of the aforementioned amount of compensation"*. The DRC does not, however, give any further comments or explanations regarding its decision.

163. As noted above, the Panel, for procedural reasons, has no basis on which to make an award for an amount less than that awarded in the Appealed Decision. Along the same lines, the Panel has no basis on which to make an award discarding one of the two parties held liable for the payment of the amount awarded in the Appealed Decision. Again, this would be tantamount to granting Raja Club what is in fact an inadmissible counterclaim and put the Appellant in a worse position.

164. Therefore, it need not be discussed whether Raja Club has rebutted the presumption of inducement set out in Article 17 para. 4 cl. 2 RSTP (*"It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach"*). Further, it need not be discussed whether the Panel can rely on the case CAS 2013/A/3365-3366 where the Panel objects to deem the new clubs jointly responsible and finds *"that Article 14.3 [of the Regulations governing the Application of the 2001 RSTP] does not apply in cases where it was the employer's decision to dismiss with immediate effect a player, who, in turn, had no intention to leave the club in order to sign with another club and where the New Club has not committed any fault and/or was not involved in the termination of the employment relationship between the old club and the Player"*.

D) Must a disciplinary sanction be imposed upon someone?

165. Article 17 para. 3 and 4 of the RSTP states the following:

> *"3. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.*
>
> *4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two registration periods".*

166. The Appealed Decision does not contain any consideration with reference to why the DRC refrained from imposing a disciplinary sanction upon the Player, who was found to be in breach of contract without just cause during the protected period or Raja Club. At the hearing before the CAS, Ms Livia Silva Kägi explained that the DRC did not impose a sanction upon the Player as he served a nine-month suspension for a doping offense, of which he was cleared. FIFA emphasizes in its answer, filed on 28 October 2014, that *"it is left to the free discretion of the competent deciding body, i.e. the DRC, to, depending on the specific circumstances of each particular case, impose the sporting sanctions provided for by art. 17 par. 3 of the Regulations or, respectively, to refrain from doing so"* and claims that the DRC took into account the *"very particular and specific facts to the present matter"*. Further, according to FIFA, *"above considerations regarding the free discretion of the competent deciding body also apply to sporting sanctions for clubs pursuant to art. 17 par. 4 of the Regulations"*.

167. The Panel observes that the effective suspension served by the Player has no relation whatsoever with the premature termination of the Employment Agreement without just cause. Hence, it finds the explanation offered by FIFA unconvincing.

168. Nevertheless, it is uncontroversial that the DRC did not impose any sanction upon the Player or his new club. The only party to the present arbitration proceedings to disagree with the DRC findings with regard to the absence of disciplinary sanction is the Appellant. The question, which arises, is whether the Appellant has the standing to require that a sanction be imposed upon the Player and/or Raja Club.

169. In this regard, the Panel endorses the position articulated by DUBEY J-P, Counsel to the CAS (The jurisprudence of the CAS regarding Article 17 para. 3 of the FIFA regulations on the status and transfer of players, in CAS Bulletin, 1/2010, page 40):

> *"(…) the Panel in the Mexès case found that the duration of a suspension regarding a player who is not anymore part of its roster had no effect on this player's former club. Therefore, the latter had no legally protected interest to require that a sanction be imposed on the player or that the sanction be aggravated [TAS 2004/A/708, para. 78].*
>
> *The CAS confirmed this orientation in a later case in which the Panel stated that no rule of law, either in the FIFA Regulations or elsewhere, was allowing the club victim of the breach of contract to request that a sanction be pronounced. Indeed, the system of sanctions laid down rules that applied to the FIFA, on the one side, and to the player or to the club that hired the player, on the other side. A third party had no legally protected interest in this matter [TAS 2006/A/1082 & 1104, para. 103]".*

170. In light of the foregoing, the Appellant's request for sanctions to be imposed upon the Player or Raja Club must be dismissed without further considerations.

171. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Emirates Football Club Company on 8 August 2014 against the Decision issued by the FIFA Dispute Resolution Chamber on 7 February 2014 is dismissed.

2. The Decision issued by the FIFA Dispute Resolution Chamber on 7 February 2014 is confirmed.

(…)

5. All other motions or prayers for relief are dismissed.